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## I, User -- The eBook Prospectus: 2004

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or risk losing them. As the company put it:

OCLC is disappointed that legal action had to be taken against **The Library Hotel**. This is an unusual event for OCLC. However, trademark law imposes affirmative obligations on trademark owners to protect their trademarks, or risk losing all rights in those marks through legal abandonment. We felt that abandoning our rights in the **Dewey** trademarks was an unacceptable result for the OCLC membership.

As the company pointed out later in the announcement, it had repeatedly asked **The Library Hotel** to sign a document acknowledging OCLC's ownership of the **Dewey** trademark and stipulating that the hotel was using the system by permission of OCLC. The hotel refused to do so, and OCLC finally decided to sue.

That explanation mollified many librarians. *The Library Journal Academic News Wire* wrote sympathetically of OCLC's plight in an issue dated September 23, quoting **Joseph Dreitler** (an attorney with **Jones Day**, the firm representing OCLC in the suit) as saying that the suit was "unfortunately necessary" and that OCLC had merely asked the hotel to "simply sign some form of agreement acknowledging that the hotel's use of the **Dewey Decimal System** was granted by permission of OCLC... All OCLC needed was a piece of paper they could put in their file." *The News Wire* quoted **Dreitler** further as saying that OCLC was never interested in pursuing any kind of payment from **The Library Hotel**; all it wanted was acknowledgment of OCLC's ownership of the **Dewey** system. (The story did not mention that OCLC's is now seeking damages to the tune of triple the hotel's profits since its opening.)

Not everyone was reassured by OCLC's response, however. Some librarians remained unmoved, and said so publicly. As **Chuck Hamaker**, of the **University of North Carolina** at Charlotte, put it in a posting to the **LIBLICENSE-L** list: "This case just makes librarians and their organizations look dumb and dumber." Outside the profession, people were even more incredulous. The popular NPR game show "Wait, Wait, Don't Tell Me" used the story as a ridiculous example of "things people think belong to them."

Of course, the wags at NPR were wrong. The **Dewey** system really does belong to OCLC — that's not the question. The question is whether OCLC is wise to sue **The Library Hotel** for trademark infringement. To answer that question for ourselves, we should probably ask two others:

First: Given that OCLC cites the welfare of its member libraries as its goal in choosing who may and may not use the **Dewey** system, we should probably ask exactly how libraries benefit from OCLC's exercise of that control. If OCLC wins this suit, will libraries be better off, and if so, how? I posed this question to **Bob Murphy**, of OCLC's communications office. He referred me

to OCLC's public statement on the issue and did not respond to requests for further comment. (Those interested can read the full statement at <http://www.oclc.org/news/announcements/announcement40.htm>, and may decide for themselves whether it answers the question.)

The more interesting legal question is this: if the **Dewey** system is a valuable trademark, why then does OCLC not pursue the hundreds of libraries that make use of it in a way similar to that made by **The Library Hotel**? Libraries all over the country organize their offerings according to the **Dewey** system, and make prominent mention of it in their literature and signage. They do so without ever mentioning OCLC, without indicating that "**Dewey Decimal System**" is a trademark, and without signing any kind of license agreement. Given this reality, in what way is OCLC's trademark being harmed by **The Library Hotel**?

I called OCLC to pose that second question, and ended up speaking with **Mr. Dreitler**. He explained that OCLC is more than happy to have libraries use the **Dewey** system without acknowledgment. "People who buy the **Dewey** schedules for use in a library are encouraged to do so," he said. But, I then asked, what if a library were to use the **Dewey** system without buying the schedules? "That's okay," said **Dreitler**, "because they're not selling a product. OCLC wants people to use **Dewey** in libraries, but not in hotels or restaurants without proper attribution and permission."

**Dreitler's** answer still leaves me wondering, though. As holder of the trademark, OCLC certainly has the legal right to let libraries use it and to forbid hotels to use it. But don't libraries have an obligation to formally acknowledge the true ownership of the trademark, just as OCLC is insisting **The Library Hotel** do? And if OCLC tacitly permits hundreds of libraries to use its trademark without acknowledgment or formal permission, how will a judge regard its sudden concern for trademark integrity in the case of **The Library Hotel**?

There is another question. To win its case I would imagine that OCLC is going to have to demonstrate that **Dewey** is, in fact, a viable and valuable trademark in the library community, which **Dreitler** says is OCLC's marketplace. To prove that, I think it will have to demonstrate that librarians recognize **Dewey** as the trademark name of a commercial product. I'm pretty sure that most librarians do not, in fact, recognize it that way. Yes, they buy the **Dewey** schedules from OCLC, but it's one thing to know that OCLC publishes the schedules and another to know that the term "**Dewey Decimal System**" is itself a trademark of the company. My library's copy of the 1989 edition of the **Dewey** schedules does indicate quite clearly, on the verso of the title page, that the term "**Dewey Decimal System**" (among other related terms) is a registered trademark of OCLC. So OCLC can certainly make a case that librarians *ought* to know — but since most librarians apparently do not, and since they have been demonstrating that ignorance by freely using the term without acknowledgment in their own literature, signage and Websites, and since OCLC has never taken libraries to task for trademark infringement, will a court be sympathetic to OCLC's claims now?

With all of these issues in mind, I think **The Library Hotel** may have been smart to tell OCLC (in **Dreitler's** paraphrase) "basically... to get lost" when OCLC asked it to sign a document acknowledging OCLC's right to grant or deny permission to use **Dewey**. Had the hotel signed, I think it would thereby have contractually acknowledged OCLC's right to revoke that permission in the future, and would have been constrained by the terms of the contract to submit to that revocation if it happened. By not signing such an agreement, **The Library Hotel** is forcing OCLC to argue the viability of "**Dewey Decimal System**" as a trademark in court — and that's a case that OCLC may have some difficulty making.

On the other hand, maybe the case will be a slam-dunk win for OCLC. I'm no lawyer and no fortune-teller. I'm just a librarian asking questions. 🐾

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## I, User — The eBook Prospectus: 2004

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by **Rick Lugg** and **Ruth Fischer** (R2 Consulting)

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*Column Editor's Note: This prospectus explains what you should know about eBooks before you invest. Please read it carefully. The SEC has not approved or disapproved this offering, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense. — RL*

It's been a confusing couple of months here in eBook World, enough so to turn the steeliest speculator toward safer investments, like derivatives of CEO salaries. On the one hand, we've seen enough gloomy news to suggest that the Promised Land may actually consist of Florida mangroves, and yet, almost simultaneously, new companies and products have entered the fray,

reviving at least the rhetoric of boomtown. In short, a great time to be alive!

The bears can point a paw toward **B&N.com's** surprise announcement on September 9<sup>th</sup> that it would stop selling eBooks, effective immediately. (Customers have until December 9<sup>th</sup> to complete downloads of previously purchased **Adobe** and **Microsoft Reader** titles.) **B&N.com's** decision followed by some months that of **Gemstar**, which ceased selling (or apparently, *trying* to sell) **RCA eBook** devices and content in June. Given **B&N.com's** early leadership in eBook selling, and its extensive customer reach, this equates to at least a 5.0 on the industry's Richter scale, and testifies to the bears' depression.

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Back in January, a U.K. programmer named **Dan Jackson** released software online in his bid to become the **Microsoft** version of **Dmitri Sklyarov**. Jackson's program, known as **ConvertLit** (.lit is the file extension for **MS eBooks**), enables a user to strip **Microsoft's** copy protection from eBook files. This allows a user to copy and distribute the file to other machines—something that warms the heart of every copyright holder.

And yet, despite such downers, as in **Pamplona**, the bulls run...or the bull runs—take your pick! On September 16th, the **Open eBook Forum** ([www.openebook.org](http://www.openebook.org)) released sales figures for the first three quarters of 2003, showing growth in unit sales of 40% over 2002, and projecting a \$10 million market for 2003. And while \$10 million won't buy a self-respecting CEO and remains a miniscule portion of the \$32 billion print publishing market, these sales figures are nearly twenty times what they were in 2000. [More entertaining is to revisit market projections from that era, which ranged from a modest \$267 million for downloads to reading devices, to the Anderson/AAP prediction that eBooks would account for ten percent of the publishing market (\$3.2 billion) by 2005. All that digging, and somehow we missed the mother lode.]

And while **B&N.com** retreats from eBooks, **Amazon** continues to advance, expanding its "Look in the Book" browsing capability toward a target of 265,000 titles, and persisting with eBook sales in a range of formats. In July, **Microsoft** itself threw its non-monopolistic weight behind eBooks, offering sixty bestsellers (**Bill Bryson**, **Walter Mosley**) free of charge, to promote the use of **Microsoft Reader 2.0** ([www.microsoft.com/reader](http://www.microsoft.com/reader)). Overall, there are now more than 20,000 titles available for **MS Reader**; a complete list, developed in collaboration with **Texterity**, can be found at [www.mslit.com](http://www.mslit.com).

Meanwhile, rival **Adobe** has incorporated its eBook reader software into **Acrobat 6.0**, in effect distributing eBook capability to any of the 200 million+ desktops on which an updated **Acrobat** resides—and on PDAs running **Adobe Reader for Palm OS 3.0**. "Tens of thousands of PDF **Adobe** eBook titles are available through online retailers such as **eBooks.com** ([www.ebooks.com](http://www.ebooks.com)) and **Amazon**, among others—a complete listing can be seen at ([www.adobe.com/epaper/ebooks/ebookmall/main.html](http://www.adobe.com/epaper/ebooks/ebookmall/main.html)). This site is not to be confused with (although I admit to doing so) [www.ebookmall.com](http://www.ebookmall.com), which lists 25,000 titles in eleven formats.

On the eBook "appliance" front, again, it sounds like a bad night on **Crossfire** as bulls and bears go at it. As noted previously, **Gemstar** ceased operations this summer, consigning thousands of **RCA eBook** devices to clearance sales and museum-piece status. Such devices hadn't caught on, the company said. And yet, within days of **Gemstar's** closing, Japanese giant **Matsushita Electric** (maker of all things **Panasonic**) introduced a new eBook appliance that can run up to six months on two AA batteries. This "**Sigma eBook**" features two 1024 x 768 screens (better, but still far from the resolution of print on paper), hinged like a...book, and will retail for \$250. The first content planned for the device will be limited to fiction and comics, with Japan as its primary market.

**Hewlett Packard Labs Bristol** also got into the act, with development of a prototype dubbed "**Digi-**

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**tal Media Viewer.**" This experimental device features page-turning software activated by touch-pad, riffling, and the ability to hold an image without being powered. Inventor **Anthony Sowden** sought to mimic "the craft of typesetting books" in his display, and to create a device lightweight and comfortable enough to achieve "transparency." He provides his own bullish take on eBook prospects in an interview: "I want to present a dilemma to...[HP] management, that suggests we could make the ebook business work. And if we don't, somebody else will. And whoever does, there is an opportunity to make a huge amount of money in it..."

**Palm Digital Media** ([www.palmdigitalmedia.com](http://www.palmdigitalmedia.com)) has to date seen more of this money than other companies. More than 10,000 titles are now available for the **Palm Reader**, up from 3,500 in 2002. Its partnerships with **OverDrive**, **Lightning Source**, **eBooks.com** and many other eBook retailers, combined with the ubiquity and mobility of **Palm** devices, make **Palm eBooks** attractive to a certain segment of readers—i.e., those who already carry **Palm Pilots**! In 2002, this translated into 180,000 individual eBook sales, and **Palm eBooks** remain the fastest-growing line in the business. **Palm**

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**Reader Pro** now extends upward to desktop and laptop PC's. In early 2003, **Palm** developed software to enable library patrons to check out **Palm Reader** books, supported by **OverDrive's Digital Library Reserve** ([www.overdrive.com](http://www.overdrive.com)).

eBooks in libraries, of course, are a proposition unto themselves, and the bears and bulls do battle here as well. Librarians know well the trials of **netLibrary** and **ebrary**, in all senses of the word. They've witnessed the unexpected demise of **IT Knowledge**, and have wrestled with the access models currently on offer, and for the most part have adopted a "let's try a few and see how it goes" approach. But the market moves inexorably onward, stimulated in part by patron enthusiasm for e-journals and remote access to library resources, and perhaps, that enormous amount of money for whoever gets it right. The most significant library-related development in the past year was the release of **Adobe Content Server 3.0**, which manages encryption, activation, and secure lending and reserve transactions for eBooks. This technology underpins some of the new services described below.

In June 2003, the **Open eBook Forum** recognized the uniqueness of the library market by creating a **Library Special Interest Group**, "to foster good implementation of eBooks into libraries and to work out any business, technical or legal barriers to that implementation. Interested librarians can join the discussion at [www.openebook.org/oebf\\_groups/library.htm](http://www.openebook.org/oebf_groups/library.htm). And several firms have launched new eBook initiatives for libraries just this year, including **OverDrive**, **eBooks Corporation**, **Blackwell's Book Services**, **Baker & Taylor/YBP Library Services**, and **Follett**.

**OverDrive's Digital Library Reserve** has met with early success in public libraries, notably **Cleveland Public**, **Wright Memorial**, and **King County**. **OverDrive's "Library Digital Kiosk"** provides a Web interface for library patrons, and its "**Collection and Circulation Manager**" and "**Digital Library Reserve Server**" support selection, download, encryption, and lending to enable eBook content in **Adobe** or **Palm** readers on PCs and PDAs. ([www.overdrive.com/library/overview.asp](http://www.overdrive.com/library/overview.asp)). Its collection of 55,000 titles is second only to **netLibrary's**. **OCLC MARC** records are available for all titles, and the system is designed to integrate with the library's **OPAC** to enable circulation and lending from the library's customized "kiosk."

**eBooks Corporation** has operated a commercial eBook site ([www.ebooks.com](http://www.ebooks.com)) since 2000, and has recently decided to make its collection of 25,000 titles available to libraries through a new service called "**eBook Library**" ([www.library.ebooks.com](http://www.library.ebooks.com)). **EBL**, as the service is known, was announced on September 14<sup>th</sup> at **ICOLC**, and is expected to launch in June 2004. The new system will feature an innovative access model, dubbed "**Non-Linear Lending**," which enables libraries to lend the same book to multiple concurrent users. In essence, each eBook copy is construed as available for a fixed

number of days per year (like a print book), but those days can be used in response to patron demand. Also planned is a "rental" or short-term circulation model, which can provide an alternative to **ILL**. **EBL** can also serve individual chapters for **eReserve** and "**ePacks**;" delivery will be in **Adobe** format, to allow download to PCs and PDAs. Initial focus of the collection is on current **STM** titles, though all academic disciplines are covered. Close cooperation with **ILS** vendors is also planned, for integration into **OPAC** and Circulation modules. Library trials will begin in early 2004.

**Blackwell's Book Services**, in addition to its collaborations with **ebrary** (on "**Preview**") and **netLibrary** (allowing selection and ordering of eBooks via **Collection Manager**), has also initiated a new **Digital Reference Service**. Titles initially available include major reference works from **Taylor & Francis**, **Wiley**, **Annual Reviews**, **AIP**, and **Springer**, with additional titles slated from **Kluwer**, **Oxford**, and **Palgrave MacMillan** ([www.blackwell.com/level2/DigitalReference.asp](http://www.blackwell.com/level2/DigitalReference.asp)). As with print works, **Blackwell's** handles ordering and invoicing, and consolidates titles from a number of publishers, streamlining the library workflow. Unlike print works, **BBS** also handles licensing, **FTE** or concurrent user counts, and **IP** ranges. In some ways, this initiative begins the re-invention of traditional library suppliers, a phenomenon that must persist as more content is delivered in electronic form.

Although **Baker & Taylor** and **YBP Library Services' ED (E-Content Distribution)** has been announced before, a couple of new developments are worth noting. First, **ED's** 8,000 or so titles are now included in both **GOBI Edition 2 (YBP's online service)** and **B&T's Title Source II**, and **BT Link Online**. This allows simultaneous consideration of print and eBook editions of the same content when both are available, and allows a librarian to select and order eBook titles using the capabilities of **GOBI** and **TS II**. Once an eBook is purchased, patrons can download to PCs or PDAs running **Adobe** software. **ED's "Library Administrative System"**, based on **Adobe Content Server 3.0**, also provides an eBook management system for libraries. **YBP** has assembled a quarterly list of "**ED eBook Essentials**" ([www.ybp.com/acad/EdCover.htm](http://www.ybp.com/acad/EdCover.htm)), which includes eBook titles previously covered on the approval program. Publication years cluster between 1999 and 2002, with some 2003 imprints as well.

In other developments, work continues at the **CDDC (Chicago Digital Distribution Center)** on the "**BiblioVault Scholar's Portal**" interface and short-run digital printing system for 5,000 university press eBooks from 22 scholarly publishers. (<http://cddc.uchicago.edu>). Individual publisher eBook sites, such as those run by **Taylor & Francis** ([www.ebookstore.tandf.co.uk](http://www.ebookstore.tandf.co.uk)), **Kluwer** (<http://ebooks.kluweronline.com>), and others, sell academic eBooks mostly to individuals, but in some cases on subscription to libraries (e.g., **CRC Handbooks**). **Online Reference**, **IT** and other subject-based collections, carefully selected, updated, linked, and sup-

ported with well-designed interfaces, attract a growing customer base for **Oxford**, **xrefer**, **Books 24x7**, **elementK**, **Knovel**, **MDCConsult**, and others. Provision of **MARC** records for eBook titles is increasingly common, with **OverDrive** and **CRC Press** among the most recent to announce such a service. Finally, in a sure sign that eBooks are coming of age, **ARL** now spells out how to count them as part of collection tallies ([www.arl.org/stats/arlstat/arlstatqa.html](http://www.arl.org/stats/arlstat/arlstatqa.html)).

Meanwhile, grizzled industry veterans **netLibrary** and **ebrary** continue to evolve. **netLibrary** today (9/20/03) boasts 60,247 titles (the largest single repository of eBooks), and 5,500 library customers. Its **TitleSelect** systems offers improved search, selection and ordering, de-duplication within lists, export or emailing of lists, and for most titles displays **LC** classification and subject headings. A recent partnership with **RosettaBooks** makes available a collection of "**Modern Masters**" (**Vonnegut**, **Styron**) for purchase or rental. They have achieved at least partial integration with library systems. And through collaboration with book vendors such as **Blackwell's**, **EBSCO** and **Follett**, **netLibrary** has simplified selection and purchase of individual titles, and recognized the need to match its activity to library workflows. Its "one book, one user" approach persists for the time being, though investigation of concurrent use is underway. **netLibrary** remains the market leader.

**ebrary** characterizes its "Academic Complete" collection of 13,000+ titles from 160 publishers as a database, available in full or in part by subscription based on **FTEs**. **ebrarian for Libraries** supports multiple simultaneous users; users can search full-text across the collection, and take advantage of Web links and research tools. **MARC 21** records with a link in the 856 field are provided for all titles. **Ebrary**, too, has worked closely with **ILS** and book vendors. Through an innovative partnership with **Blackwell's**, for instance, a selector using **Blackwell's Collection Manager** can "preview" the full text of any ebrary title, and then return to the **CM** interface to select or order. **ebrary** has a similar partnership with **Books-In-Print**, and these services provide an example of how eBooks might be used to support library selection—in print or in electronic form.

In summary, 2004 is shaping up to be an active and interesting year for eBooks, especially in libraries. Perhaps most significant (and unpredictable) will be the jostling and convergence of different types of players: publishers, eBook providers, book and serial vendors, and **ILS** vendors all have a stake in how eBook distribution evolves. As, of course, do libraries. Good ideas and new models continue to surface, but many more issues remain to be resolved, and many more books (and customers) remain to be converted. At present, both opportunities and risks are modest—a good time to experiment, to pursue a series of small investments, the kind that bore both bulls and bears, but help illuminate the next step. 🐾

